

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 October 2011

**Public Authority:** Stoke on Trent City Council  
**Address:** Civic Centre  
Glebe Street  
Stoke on Trent  
ST4 1HH

### Summary

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The complainant asked for information relating to foreign trips undertaken by council officers or elected members. Stoke on Trent City Council ("the council") applied section 12(1) of the Freedom of Information Act 2000 ("the FOIA"). The Information Commissioner ("the Commissioner") investigated and decided that the council had not demonstrated that section 12(1) was engaged. He has ordered the council to confirm what information it holds and, in relation to information that it holds, to either supply that to the complainant or apply an exclusion or exemption under the FOIA other than section 12. The Commissioner found breaches of section 1(1)(a) and 10(1).

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. This Notice sets out his decision.

### The Request

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2. The complainant made a request to the council (undated) for information in the following terms:

*"I would like to know in the last four years how many foreign trips have been undertaken by officers and/or elected members of the authority. For each trip I would like a breakdown of personnel who attended (ie how many officers at which level and how many*

*councillors). I would like to know the location, date, and duration of the trip and the total cost to taxpayers”.*

3. The council replied on 21 January 2011. It said that it held some of the information requested however it estimated that compliance with the request would exceed the appropriate limit of £450 provided by section 12 of the FOIA. It explained that the information is not held in a central location. Obtaining the information would require contacting every manager who is eligible to book overseas travel to establish what trips have taken place, the destination, date and duration as well as the reason that the trip took place and the job title of the individuals who attended. It explained that the finance department would then need to interrogate their systems to establish the cost of the trip.
4. The complainant requested an internal review of the decision (undated). She said that an email to relevant managers would cost nothing.
5. The council completed its internal review on 18 February 2011. It said that it wished to maintain its reliance on section 12. The council explained that it had contacted its finance department. It referred to a “ledger and creditors system” and it said that this did not show a separate “detail code” for foreign travel as the information is recorded amongst all other travel expenses. The council said that if it contacted all the managers who were eligible to book foreign travel it estimated that it would take 5 minutes to ask each of them whether they held relevant information.

## **The Investigation**

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### **Scope of the case**

6. On 18 February 2011, the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the council had correctly applied section 12(1) of the FOIA.

### **Chronology**

7. The Commissioner corresponded with the complainant and the council between 16 June 2011 and 16 August 2011 to further his enquiries.

## Analysis

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### Substantive Procedural Matters

#### Section 12(1)

8. Section 12(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. In the case of your authority, this would be £450.
9. When considering whether section 12(1) applies, the authority can only take into account certain costs as set out in Statutory Instrument no 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004". Paragraph 4(3) states the following:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in –

  - (a) determining whether it holds the information
  - (b) locating the information, or a document which may contain the information
  - (c) retrieving the information, or a document which may contain the information and
  - (d) extracting the information from a document containing it.
10. When estimating the cost of a staff member carrying out the above activities, the costs are taken to be at a rate of £25 per hour which equates to 18 hours work.
11. During an initial telephone conversation with the council, the Commissioner asked the council to clarify what, if any, recorded information it held as its responses to the complainant had not been entirely clear on this point. The council confirmed to the Commissioner that it was not sure what information it held. The Commissioner invited the council to make contact with relevant staff members to establish this unless that alone would exceed the appropriate limit. On this point, the Commissioner agrees with the complainant that it would certainly not exceed the cost limit for the council to send an email to make the enquiries. The council decided that it would be necessary to send an email to all of its staff members and it confirmed that it was willing to do this.

12. The Commissioner sent a follow up letter explaining the application of section 12(1) in detail. He asked the council to break down its estimate into the categories specified and to explain in detail how it had arrived at the estimate for each of the relevant activities.
13. When the council responded to the Commissioner, it was apparent that it had decided not to contact its staff to investigate what information it held. It said that if it asked all of the managers who were eligible to book overseas travel whether they hold relevant information and it took 5 minutes of time for each of those managers to consider whether information was held, that alone would exceed 18 hours. It also said that if it only asked certain senior staff in its finance department and if everybody spent five minutes each considering the issue that would also exceed the appropriate limit. The council also referred to foreign travel funded by "external sources" and information held on the council's "old finance systems" but it did not elaborate.
14. The Commissioner telephoned the council again to discuss its response. The Commissioner asked the council if it could explain how it records information about travel undertaken by its staff. The council was unable to do this clearly. It referred to records held by "payroll" and although it was not precise about what information would be contained within these records. It also referred to a finance system but was unable to explain what information was recorded on it, other than to say that it did not indicate foreign travel as a distinct category. The council also added that it thought information could be held in other ways although again, it did not explain this clearly. It mentioned the use of credit cards for expenses.
15. The Commissioner did not consider that the council had demonstrated that section 12 was engaged in this case. Firstly, the Commissioner was not satisfied that it would be necessary for the council to consult so many individuals. He could not be satisfied in relation to this because the council did not describe clearly how it recorded information relating to travel. The council was unable to explain when asked whether there was any way of avoiding mass email enquiries by using records that could be accessed more readily to establish who had engaged in an activity involving funded travel, regardless of whether it was a foreign trip or not. If it was possible to identify those who had engaged in an activity involving funded travel in general, this would mean that the council would only need to make enquiries of those individuals to establish whether any records were held regarding foreign trips. The council also said that it had considered the possibility of identifying foreign trips through staff ordering foreign currency but it had determined that this was not a viable option because it would not identify where more than one person was party to the trip. The

Commissioner considers that this comment suggests that it would be possible for the council to identify those staff who had ordered foreign currency, and to make enquiries of those individuals first to see if they could identify who else had attended the same trip if more than one person had attended. This option was not explored before the council determined its estimate.

16. Even if it was not possible to narrow down the individuals who needed to be consulted, the Commissioner would not accept that everybody asked would spend five minutes of their time considering whether they have booked any foreign trips. The Commissioner would anticipate that the number of individuals who had travelled abroad would not be very extensive and that most individuals would know instantly whether they have travelled abroad in the last four years. Those individuals who know that they have not travelled abroad in the last four years should be able to confirm that immediately and can therefore be discounted from the time estimate.
17. Furthermore, because the council had not attempted to contact its staff to make the necessary enquiries about how the information was held or might be held, the basis on which it had determined how long it would take to locate, retrieve and extract any information that was held could not be supported.

### **Procedural Requirements**

18. The Commissioner considers that the council breached section 10(1) and 1(1)(a) for its failure to clearly confirm or deny what recorded information it held.
19. As the Commissioner has found that section 12(1) was not engaged, the council breached section 10(1) for failing to either disclose the information or issue a valid refusal within 20 working days of the request.

### **The Decision**

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20. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the FOIA because:
  - The council did not demonstrate that section 12(1) was engaged in this case and therefore:
  - It breached section 10(1) and 1(1)(a) for its failure to clearly confirm or deny what recorded information it held.

- It breached section 10(1) for failing to either disclose the information or issue a valid refusal within 20 working days of the request.

## **Steps Required**

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21. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOIA:
  - Write directly to the complainant and confirm what, if any, recorded information was held falling within the scope of the request
  - Where information was held, either provide that to the complainant directly or issue a valid refusal notice relying on an exclusion or an exemption other than section 12(1).
22. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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23. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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24. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 17<sup>th</sup> day of October 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex – Freedom of Information Act 2000**

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### **General Right of Access**

#### **Section 1(1) provides that -**

“Any person making a request for information to a public authority is entitled

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(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

### **Time for Compliance**

#### **Section 10(1) provides that –**

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Exclusion where cost of compliance exceeds appropriate limit**

#### **Section 12(1) provides that –**

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”